IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2061 of 2000
With
CIVIL APPLICATION NO. 5324 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ELECTRICAL AND ALLIED STAFF ASSOCIATION, WESTERN REGION
Versus
ONGC LTD, THROUGH CHAIRMAN CUM MANAGING DIRECTOR

Appearance:
MR BS MISHRA for Petitioner
MR RAJNI H MEHTA with Mr. Ajay R. Mehta, Mr. Kishore Gadhia and Mr. M.A. Patel for Respondent No. 1, 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 08/08/2000

CAV JUDGEMENT

1. The Petitioner Association filed the present writ petition for a direction on respondent Oil & Natural Gas

Corporation (ONGC) not to enforce the Recruitment & Promotion Regulations (Modified) which has come in to force from 1-1-1997 at Annexure-B; and also for the direction on the respondent to follow the principles of Industrial Disputes Act and the rules thereunder for the districts of Ahmedabad, Vadodara, Ankleshwar, Cambay and Jodhpur having 500 workmen as members. The Corporation were previously following the Recruitment & Promotion Rules 1980 for appointment and promotion in the Corporation. It is further submitted that, according to the 1980 Rules the workmen had chances of getting promotion in the executive level. In 1997 Regulation a bar has been created for being promoted to the executive cadre. It is an admitted fact that the ONGC have two grades, namely (1) Executive cadre and (2) Supervisory cadre. For entering in the executive level, in 1997 regulations a provision has been made that unless & until an employee is holding Degree or Diploma in Engineering such an employee cannot be promoted in the executive level. However for those workmen not having the qualification of degree or diploma in engineering, such person can be promoted to executive level if he passes the departmental examination prescribed for it. However there is no bar for such person being promoted to the post of Supervisory level. The petitioners are aggrieved by this provision. It is contended that, in 1980 Rules there was no such provision for appearing in the examination for entering into executive level but with the introduction of the aforesaid new provision a bar has been created for non supervisory staff from getting promotion to executive level on the basis of seniority only.

2. It is further submitted that, according to the provisions of I.D. Act, the respondent Corporation cannot change the conditions of service without consulting registered unions. In the present case the Corporation did not consult the petitioner association before making or implementing 1997 Regulations and therefore, it is the say of the petitioner that the Corporation has violated provisions of the I.D. Act 1947 and the Rules made thereunder. It is submitted by learned counsel for the petitioner that the petitioner association also made representation to the Corporation. They have also issued notice for strike for cancellation of the implementation of trade test/ job test/ job oriented test for being promoted to the cadre of executive level. The Regional Labour Commissioner (Central) also issued notice to the Corporation for settlement of the dispute. During pendency of the conciliation proceedings , the respondent Corporation

issued certain promotion orders under 1997 regulations and therefore the petitioners have filed this writ petition challenging the promotions as well as validity of the 1997 R & P Regulations.

4. The respondent Corporation has filed counter affidavit, wherein it has been stated that, while proposing the 1997 Recruitment & Promotion Regulations the petitioner association was not in existence as the petitioner association has come in existence only in 1996. It is further submitted that the respondent Corporation have offices through out India and in all places there are recognised registered trade unions. The Corporation called representatives of the recognised unions from all over India on 8-1-1994 to form a small working group to discuss the issue indepth and to work out some draft for modification of R & P Regulations, 1980. Based on this decision a working group was constituted by the management, consisting of senior executives of the management and of General Secretaries of recognised unions of the Corporation. After many deliberations and discussions R & P Regulations 1997 were finalised by the Corporation in consultation with the recognised unions of all over India. It is further submitted that, in accordance with the memorandum of understanding signed with the recognised unions and as agreed between by the representatives of the recognised unions and management the 1997 Regulation (Modified) were issued on 14-3-1997. It is further submitted that the environment characterised by liberalisation, opening up of oil sector and resultant competition from world over has forced the management to emphasis professionalism while promoting people with lower qualification (SSC/ Trade Certificate). It is also submitted that in this perspective the professional test has been introduced as selection criteria for promotion from top of Class III (A-IV) level to E-O level (the lowest level in Executive Cadre) for lower qualified employees not having degree or diploma in engineering. It is further submitted that the 1997 Regulations were made as per Memorandum of Understanding/ Agreement signed by the recognised unions and the management. Therefore no illegality has been made in replacing 1980 Rules by 1997 Regulations; therefore the petition deserve to be dismissed.

5. Learned counsel Mr.B.S. Mishra for the petitioner submitted that 1997 Regulations provide for job oriented test for promotion to the executive cadre. Learned counsel further submitted that in 1980 rules a worker need not to appear in such test, that is job oriented test, for promotion to the executive cadre and

this change has adversely affected the members of the association and it is disadvantages to the members of the petitioner association. Learned counsel for the petitioner further submitted that the petitioner association is a recognised association and, therefore, the respondent Corporation should have consulted them before enforcing 1997 Regulations. It is further argued by learned counsel for the petitioner that no change in the condition of service can be made except in accordance with the provisions of the Industrial Disputes Act and the Rules thereunder. Learned counsel further argued that, the Corporation did not consult the petitioner association before enforcing 1997 Regulations and thus the Corporation has violated the provisions of the I.D. act. Accordingly learned counsel submitted that 1997 regulations cannot be enforced while promoting members of the petitioner association in the executive cadre.

6. Mr. Rajni Mehta, learned counsel appearing on behalf of the Respondent Corporation submitted that, there is no indefeasible right on the petitioner association to claim promotion to which qualification can be prescribed and there is no guarantee that those rules framed by the Corporation in that behalf would always be favourable to the employees. Learned counsel submitted that, it is not a fact that the non degree or diploma holders are debarred from being promoted in executive cadre in the Corporation. Learned counsel submitted that, for improving the efficiency in the working of the Corporation a provision has been made for passing job test examination for the employes who are not having degree or diploma in engineering. It is further submitted that non degree or diploma holder employees can also be promoted to the executive cadre if they passes the job/ trade test. Learned counsel accordingly submitted that, it is not correct to say that the chances of promotion for non supervisory staff has been completely barred. The members of the petitioner union working in non-supervisory capacity can also be promoted to the executive cadre if they passes the job test of the Corporation. Learned counsel has also drawn my attention to the case reported in AIR (1999) S.C. 2012, (STATE OF JAMMU AND KASHMIR VS. SHIV RAM SHARMA & OTHERS.) In that case also similar questions were raised and the Apex Court held that, it is permissible for the employer (Government) to prescribe appropriate qualification in the matter of appointment and promotion in certain posts.

7. The law is well settled that, it is permissible for the employer to prescribe appropriate qualifications in the matter of appointment or promotion to different

posts. The case put forth on behalf of the petitioner association is that, when they joined in service requirement of passing job test was not a condition and while they are in service such prescription has been made. The Apex Court has further held that, it is clear that there is no indefeasible right in the employees to claim promotion to a higher grade to which qualification can be prescribed, and there is no guarantee that those rules framed by the Government in that behalf would always be favourable to them. In ROSHANLAL TANDON VS. UNION OF INDIA, the Apex Court held that, once appointed an employee has no vested right in regard to the terms of service but acquires status, and therefore, the rights and obligations therein are no longer determined by consent of parties but by statute or statutory rights which should be framed and altered unilaterally by the Government.

8. In the present case it appears that passing of trade test for promotion prescribed in the 1997 Regulations is not favourable to the members of the petitioner association. But the petitioner association cannot have any legal right to challenge the validity of such provision. The avenue of promotion is still retained in the regulations. Learned counsel for the respondent Mr. Mehta has also drawn my attention to the judgment of this Court passed on 17-2-2000 in Spl.C.A. No. 8545 of 1999 (Wilson D Christian & Ors Vs. ONGC & Ors). In the said case similar question was raised and this court by judgment & order dated 17-2-2000 rejected the claim of the petitioners. I have gone through the judgment passed by this Court on 17-2-2000 in aforesaid Spl.C.A. It appears that, the present case is squarely covered by the aforesaid decision of the earlier case. This Court in earlier case has raised a question whether introduction of trade test can be said to have brought about a change in condition of service. This Court in the earlier case clearly held that mere chance of promotion is not a condition of service. Petitioners right to be considered for promotion has not been taken away. What is done is that an additional qualification has been prescribed as a prerequisite for being considered for such promotion. This Court further held that by the modification of 1997 Recruitment & Promotion Regulations an avenue of promotion in supervisory cadre has also been opened which shall satisfy the need for career promotion of the petitioners and their members. The employees of the Corporation being governed by the statutory rules, the terms of contract entered into at the time of entering the service looses significance, the petitioners would be governed by the statutory rules

which can be modified by the Corporation, even to the detriment of some of the employees. The 1997 modified Regulations has taken care of the career promotion of the employees who are unable to acquire qualificati being eligible to the executive cadre, and therefore, it cannot be said that the rules are ultra vires to the Constitution. Having regard to the aforesaid decision of the Apex Court as well as the decision of this Court in Spl.C.A. No. 8545 of 1999, I am of the view that , there is no merit in the present petition. Accordingly the petition is dismissed. Rule discharged. However, I make no order as to costs.

9. No order in Civil Application No. 5324 of 2000 in view of dismissal of main petition.

Dt: 08-08-2000 (P.K. Sarkar, J)

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